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EXTRA-TERRITORIAL EFFECT OF DIVORCE JUDGMENTS IN RELATION TO THE FEDERAL CONSTITUTION.

A contribution to a contemporary, in speaking of the decision in the famous case of *Haddock v. Haddock,* 201 U. S., 562, concludes with the statement that the decision is opposed to reason, to authority, and to morality, but that it will stand until the question is raised again. This remark expressed the thought that was uppermost in the mind of the legal profession generally. And so it is with the deepest interest that the decision of the Supreme Court of the United States in the case of *Thompson v. Thompson* has been received. 33 Sup. Ct. Reptr., 129.

The plaintiff and defendant were married in Virginia and established the matrimonial domicile in that state. Thereafter the wife left home and took up her abode in the District of Columbia, where in November, 1907, she commenced a suit for maintenance, charging the husband with cruel treatment of such a character as to compel her to leave him. The husband was served with process. But meanwhile, before this, in September, 1907, he had brought an action for divorce *a mensa et thoro* on the ground of desertion without cause. An order of publication

having been made, and the wife failing to appear and defend, the Virginia court granted the divorce in October, 1907. The husband set up this decree in bar of the wife's suit for maintenance. On appeal to the Supreme Court of the United States it was held that the courts of the state which is the domicile of the husband, and the only matrimonial domicile, have jurisdiction to render a decree of divorce in his favor, although the wife has left that jurisdiction and service has been made upon her only by publication, and such a decree, under the "full faith and credit" clause of the Federal Constitution, is entitled to recognition in another state.

Without devoting too much time to reviewing the Haddock case and that of *Atherton v. Atherton,* 181 U. S., 155, the principles of which the Haddock case was supposed to have overthrown, it is desirable to have before us a brief summary of the reasoning employed in reaching the decision in the Haddock case. First, it was held that for a divorce to be valid the libellant must be domiciled in the state wherein the divorce is sought; second, that there must be personal jurisdiction over the libellee, in order for the decree to be entitled to full faith and credit in the courts of the state wherein the libellee resides; third, that failure to obtain such personal jurisdiction over the libellee will not deprive the decree of its validity in the state where rendered.

The facts and the conclusion of the court in the Atherton case are precisely the same as in the principal case, and it will be remembered that in the former it was held that a Kentucky decree of divorce in favor of a husband there domiciled, was entitled to full faith and credit under the Constitution, although the wife was domiciled in New York and was never served with process. To quote from the opinion: "The rule as to the notice necessary to give full effect to a decree of divorce is different from that which is required in suits *in personam.*" This was in fact a finding that a divorce suit is a proceeding *in rem,* and that the *res* was an indivisible *res* over which the Kentucky courts, by reason of their finding that the wife had wrongfully left the matrimonial domicile therein situated, had retained complete jurisdiction.

Now while the circumstances in the Haddock case were somewhat different from those in the Atherton case, the court proceeded along entirely different lines in reaching its conclusion, holding that a suit for divorce brought in a state other than that

of the domicile of matrimony, against a wife who is still domiciled therein, is not a proceeding *in rem* justifying the court in entering a decree as to the *res,* or marriage relation, that is entitled to recognition in other jurisdictions. This necessarily means that the court understands the proceedings to be *in personam,* and that inasmuch as the husband had wrongfully left the matrimonial domicile he could not establish it in another state and by divorce proceedings commenced there, bind the wife without her actual appearance. Had the court stopped with this statement the decision would have been a long step toward solving the difficulties attendant upon divorce litigation. But the morally uplifting effect of this part of the decision was nullified by the further observation that the decree was valid in the state where rendered. Perhaps this is the natural consequence of holding that divorce proceedings are *in personam,* and hence are analogous to proceedings in debt against a person outside of the jurisdiction. In such cases, of course, it is elementary that property of the debtor within the jurisdiction of the court rendering the decree may be subjected to execution on a judgment against the debtor, even if he fails to appear and defend. But we submit that the cases are too widely different to admit of such an analogy.

Inasmuch as the decision in the principal case is based upon the two cases herein discussed, our remarks concerning them may be considered as directly applying to the principal case as well. Considering the views expressed in both decisions, the one that the proceedings are strictly *in personam,* the other that they are *in rem,* we reach equally unsatisfactory results. If *in rem* the decision can be justified only on the ground that the *res,* the marriage status, remained in the state with the wrongfully abandoned spouse, while the one who wrongfully leaves takes with him none of the incidents of marriage. This is absurd from a logical standpoint.

Can we justify a decree on the ground that the proceedings are *in personam?* We think not. For in that event the validity of the decree in the state where rendered rests upon the fact that the requirement of personal appearance is satisfied by substituted service or service by publication. Let us suppose that instead of obtaining service in either of these forms the court had issued a writ commanding an officer of the court to go into the state where the other party to the proceedings was domiciled,

seize him, and bring the body before the court. A decree based upon such proceedings would be absolutely void. And yet by allowing service by publication does not the court do indirectly what it cannot do directly?

Throughout this whole line of decisions the object of the courts has been a most commendable one, viz., to check the lamentable increase in divorces where the principles of jurisdiction have been so loosely applied. But it is to be regretted that in so doing the courts could not feel free to meet the situation as it actually is, and declare once and for all time that a suit for divorce is a proceeding *in rem* that can be prosecuted only in the state of the matrimonial domicile; and further, that the relation of husband and wife can be dissolved only when both parties are actually before the court. And by matrimonial domicile we mean that place wherein both parties to the nuptial contract reside as husband and wife, or in cases of desertion, the domicile of the wrongfully abandoned spouse. We are aware that this would necessarily result in the dismissal of many suits that are otherwise meritoriously brought and where perhaps the person seeking the decree has ample grounds for desiring a legal separation, but we submit that only in some such manner as has been suggested can the courts escape the maze of intricacies that entangles them and reach a solution of the difficulties that these recent decisions have raised.

Mr. Justice Pitney's opinion in the principal case is probably supported by the weight of authority, but in its attempt to explain the questions left open by the former decisions, it is a disappointment.

MAY A PATENTEE LIMIT BY NOTICE THE PRICE AT WHICH FUTURE RETAILERS MUST SELL AN ARTICLE?

In the recent case of *Bauer & Cie v. O'Donnell*, 33 Sup. Ct. Rep., 616, the United States Supreme Court was called upon to determine the extent of a patentee's rights in an article which he had sold. In that case, the appellees owned letters patent covering 'Sanatogen' which was sold in packages each bearing a notice to the effect that anyone who sold the package for less than $1.00, or used it when so sold, would be dealt with as an infringer of the patentee's rights. The appellee, proprietor of a retail drug store, purchased 'Sanatogen' from brokers who had pur-